Effects of Emergency Law in India 1915-1931

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"Labor Gov't Executives 3 India Rebels: Frame-up Revolutionists For British Imperialism," Daily Worker (USA) March 25, 1931 (citing cable announcing deaths from Inprecorr in London)

"London, March 24-The three Lahore prisoners, Bhagat Singh, Raj Guru and Sukh Dev, fighters for the independence of India, have been executed by the British labor government in the interest of British imperialism. This is one of the bloodiest deeds ever undertaken by the British labor government, under the leadership of MacDonald."

Introduction: Post-1857

After the Sepoy Mutiny of 1857 Britain tried to secure its borders again. Parliament passed The Government of India Act 1858. [1] The law made India directly part of the British Empire. It granted Queen Victoria unequivocal control of all territories that the East India Company had administered since 1757. The new Empress gave a Proclamation to the people of India. She reassured her subjects that she would support a fair system of law and government that incorporated the land's cultural rights, usages and customs.

> And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.
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> We know, and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will use that generally in framing and administering the law, due regard to the ancient rights, usages, and customs of India.
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> Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly

[1] The Government of India Act 1858 21 & 22 Vict. c. 106.

> taken part in the murder of British subjects. With regard to such the demands of justice forbid the exercise of mercy.[2]

Through this Charter of Liberty[3] Victoria envisioned a constitutional monarchy to preserve the rights of locals wherever possible. Her State promised to grant an equitable environment, with a non-discriminatory and merit-based government system that was accessible to Indians. This premise continued what King William IV had intended in 1833. The King had renewed the Charter of the East India Company so that any qualified native would be eligible to work for any office in the entity.[4] It is inopportune that staunch bureaucracy did not buoy the measure. The provision was not applied in practice to higher rank offices even two decades later.[5] Queen Victoria's last paragraph above similarly demonstrated the limits of the legal system in British India. The fact that mercy was not an option would be proved in the arrests, detentions, and prosecutions of political prisoners such as Bhagat Singh Sandhu (b. 1907), Sukh Dev Thapar (b. 1907) and Shivaram Raj Guru (b. 1908). These individuals were sentenced to death by a court system that failed to

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[2] Proclamation to the Queen in Council to the princes, chiefs, and people of India (1858), By Victoria of the United Kingdom, Delivered on November 1, 1858

[3] Alfred Nundy, *Political Problems and Hunter Committee Disclosures*, (Calcutta: S.K. Roy, 1920), p. 28.

[4] Ibid. "So far back as 1833, when the East India Company's Charter was renewed by 3 & 4 William IV., c. 85, the Court of Directors thus unfolded their views in respect to this enactment:--'The Court conceive this section to mean that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be the number; that no subject of the King, whether of Indian, British or mixed descent, shall be excluded from the posts usually conferred on uncovenanted servants in India or from the covenanted service itself provided he be otherwise eligible.' But a caste was created, proud, exclusive and so jealous of its rights that John Bright stated in the House of Commons that:--'The statute of 1833 made the natives of India eligible to all offices under the Company. But during the twenty years that have since elapsed not one of the natives has been appointed to any office except such as they were eligible to before the statute.'

[5] Ibid., pgs. 28-29.
Alfred Nundy, *Political Problems and Hunter Committee Disclosures*, p. 26.

apply the right legal procedures. They were tried in special tribunals created by emergency legislation. The laws were passed in 1915 and 1919 to defuse perceived political crises, such as sedition.[6] The government considered as sedition even civilian acts of organizing and attending public meetings or spreading written information in the form of leaflets. It is unfortunate that the emergency laws did not try to balance the public interest with the protection of personal civil liberties—a compromise central in a democracy. The upshot was that the Acts were draconian and caused miscarriages of justice.

The Emergency Laws

These statutes were the Defence of India Act 1915,[7] Government of India Act 1915,[8] and the Rowlatt Act 1919.[9] They were passed to make Crown policy in India more influential. Each was directed against local and foreign discontent with British rule. This was accomplished by subordinating the due process of law, as in the Gadar trials, Amritsar Massacre, and the Bhagat Singh litigation.[10] These events will be discussed below. The issues raised remain significant. For example, Bhagat Singh v. Emperor on 27 February,

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[6] Indian Penal Code, 1860 (Act No. 45 of 1860) brought into effect on 6 October 1860, s. 124A: "Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred to contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine."
Queen-Empress v. Bal Gangadhar Tilak (1897) I.L.R. 22 Bombay High Court 112 at 135.

[7] Defence of India, (Criminal Law Amendment) Act, 1915 (Act IV of 1915) or "An Act to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences."

[8] The Government of India Act 1915 (5 and 6 Geo V, C.61)

[9] Rowlatt Act (Act No. XI of 1919)

[10] The Bhagat Singh Litigation covered three trials known as the *Delhi Assembly Bomb Case*, *Second Lahore Conspiracy Case*, and *Bhagat Singh* v. *Emperor on 27 February, 1931*.

1931[11] was the last test case by the accused to challenge the flawed emergency Acts. It was futile for the defendants, but key for requesting accountability and transparency in the current environment.

The Defence of India Act and The Government of India Act were revised in 1915 to consolidate the authority of the Lieutenant Governor and Viceroy during World War I. Section 2(1) of the Defence of India Act empowered the Governor-General in Council to make rules for securing the public safety. Section 3(1) authorized special tribunals to be formed to try persons accused or suspected of participating in certain crimes.

> The Local Government may by order in writing direct that any person accused of anything which is an offence in virtue of any rule made under Section 2, or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of Criminal conspiracy to commit, or of abetting, or of attempting to commit or abet any such offence, shall be tried by Commissioners appointed under this Act.

It is disquieting that prosecution could take place on grounds of mistrust rather than the firmer onus to establish a reasonable doubt. Also surprising is that only two of the three Commissioners required specific legal qualifications.[12] There was no right of appeal.[13]

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[11] *Bhagat Singh* v. *Emperor on 27 February, 1931* (1931) 33 BOMLR 950.

[12] Defence of India, (Criminal Law Amendment) Act, 1915, s. 4. "All trials under the act shall be held by three Commissioners of whom two at least must have certain legal qualifications and such Commissioners are to be appointed by the Local Government for the whole or any part of the province or for the trial of particular persons or classes of persons."

[13] Ibid., s. 8(1). Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of Commissioners appointed under this act and no Court shall have authority to revise any such order or sentence, or to transfer any case from such Commissioners, or to make any order under Section 491 of the Code of Criminal Procedure, 1898, or have any jurisdiction of any kind in respect if any proceedings under this Act.

The special tribunals tried nine cases. Punishments ranged from the death penalty, imprisonment, and transportation for life.

The Gadar Party was one of the main targets of the Defence of India Act. It was formed mostly of Indians based abroad. The expatriates had sought host countries for work or educational prospects.[14] This transnational group of laborers and professionals spoke out against discrimination in the home country. Many members returned to India to join the revolutionary movement, but were arrested or interned and then prosecuted.[15] The First Lahore Conspiracy Trial occurred on March 27th, 1915. At least 291 men were tried. Almost all had their property confiscated and at least seven were hanged.[16] The youngest killed was eighteen year old Kartar Singh Sarabha, an editor of the Gadar newsweekly in San Francisco. He had travelled to the U.S. when he was fifteen to study chemistry at the University of California at Berkeley. The Gadar defendants who were not acquitted were sent to jails in Lahore and the Andaman Islands. Prison conditions were grim and involved forced labor and forced nasal feeding.

Although it was meant to outlive the War by six months,[17] the 1915 Defence of India Act was drafted as a forerunner to the Government of India Act 1915 and Rowlatt Act of 1919. These statutes cut civil liberties further.

Section 72 of the Government of India Act was the POGG clause (Peace, Order, and Good Government). It gave the Governor General authority to preside over a state of emergency, but omitted to define when that circumstance existed.

Sheo Nandan Prasad Singh v. *Emperor on 5 June, 1918* (Patna High Court) 46 Ind Cas 977 at para. 69.

[14] Ram Chandra, Editor The Hindustan Gadar, San Francisco, Cal, "The Unrest In India: The Hindustan Gadar Says It Was Not Manufactured Abroad," *Letter To The Editor of The New York* Times, July 8, 1915.

[15] "Defence of India Act (Operation)," HC Deb 23 July 1919 vol 118 cc 1394-5W.

[16] "Indian Conspiracy Trial," HC Deb 14 December 1916 vol 88 cc 926-7W.

[17] Ibid., s. 1(4). *Parmeshwar Ahir* v. *Emperor on 4 February, 1918* (Patna High Court) 44 Ind Cas 185 at para. 4.

> 72. The Governor General may, in cases of emergency, make and promulgate ordinances for the peace and good governments of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subjecto the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature and maybe controlled or superseded by any such Act.

It is clear that the Governor General could not bypass the Indian legislature. Yet the judicial branch endorsed the Governor General as the absolute authority to make special tribunals and emergency ordinances.[18] Again, there was no right of appeal to a higher court.[19] In Bhagat Singh v. Emperor Bhagat Singh, Sukh Dev, and Raj Guru sought an appeal from the special tribunal that had convicted them in the Second Lahore Conspiracy Case.[20] They asked the Bombay High Court to confirm: (a) that section 72 did not conduce to the peace and good government of British India[21] and (b) that the Governor General had erred by holding there was an emergency, in order for a special tribunal to try the petitioners.[22] The court of British judges dismissed both claims. It said that Section 72 gave the Governor General an absolute power to do anything that the Indian legislature could.[23] The Governor General was not obliged to explain why he had passed Section 72.[24] Only he could

[18] *King Emperor* v. *Benoarilal* (1945) 72 I.A. 57 (Privy Council).

[19] *The Lahore Conspiracy Case Ordinance*, Lahore High Court Bar Association Report, June 19, 1930.

[20] This case will be discussed later as part of the Bhagat Singh litigation referred to in note 10 above.

[21] *Bhagat Singh v. Emperor on 27 February, 1931* at para. 6.

[22] Ibid., para. 2 and para. 3.

[23] Ibid., para. 6.

[24] Ibid., para. 8.

determine what a state of emergency was as there was no exact definition for the term.[25] Hence Bhagat Singh v. Emperor raised the clout of the Governor General but aborted justice. As will be discussed later, the verdict was incomplete since it did not ensure re-examination of the death penalty.

The Rowlatt Act also backed capital punishment to check political dissent. The Rowlatt Committee Report of 1918 recommended dealing with sedition by continuing the special tribunal system with the option of holding closed trials.

> The duty of the investigating authority will be to inquire in camera upon any materials which they may think fit and without being bound by rules of evidence. They would send for the person and tell him what is alleged against him and investigate the matter as fairly and adequately as possible in the manner of a domestic tribunal. It would not be necessary to disclose the sources of information, if that would be objectionable from the point of view of other persons. No advocates would be allowed on either side or witnesses formally examined, nor need the person whose case is under investigation be present during all the inquiry.[26]

The Rowlatt Act weakened the legal process by allowing search and arrest without warrant.[27] However, unlike the earlier statutes, it

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[25] Ibid., para. 3. "A state of emergency is something that does not permit of any exact definition:--It connotes a state of matters calling for drastic action which is to be judged as such by someone. It is more than obvious that that someone must be the Governor General and he alone. Any other view would render utterly inept the whole provision."
See *Mathoorasing* v. *Governor-General of Mauritius* 01/01/1979, 1973 SCJ 62.
"As Lord Dunedin observed when delivering the judgment of the Board in *Bhagat Singh* v. *King Emperor* (1931) L.R. 58 I.A. 169, 'A state of emergency is something that does not permit of any exact definition: it connotes a state of matters calling for drastic action…'
See also *Qarase and Others* v. *Bainimarama and Others* [2008] FJHC 241 at paras. 82-88.

[26] Sir Sidney Arthur Taylor Rowlatt, Sedition Committee Report 1918, (Superintendent Government Printing: Calcutta, 1918) at para. 191.

[27] Rowlatt Act, clause 34(1)(a)(c) and clause 36.

required High Court judges to form a three member panel.[28] This condition for qualified professionals worked against the accused ironically. It was a justification for holding secret trials[29] without jury. Judgment was final, and clause 42 sealed the non-accountability of the judges:

> 42. Orders Under this Act not to be Called in Question by the Courts: No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this act.

Amritsar Massacre

The results of implementing the Rowlatt Act were open rebellion. There were public demonstrations throughout India[30] which the administration quelled under the Defence of India and Government of India powers. In Punjab protests began on April 10th in the town of Amritsar. Amritsar had a population of about 150,000 which soon bore the brunt of police force.

On April 13, 1919 Brigadier-General Dyer issued the Amritsar Proclamation to deter increasing dismay with British rule. The Proclamation was emergency legislation governed by martial law.

> It is hereby proclaimed, to all whom it may concern, that no person residing in the city is permitted or allowed to leave the city in his own or hired conveyance, or on foot without a pass.
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> No person residing in the Amritsar city is permitted to leave his house after 8. Any persons found in the streets after 8 are liable to be shot. No procession of any kind is permitted to parade the streets in the city, or any part of the city, or outside of it, at any time. Any such processions or any gathering of four men would be looked upon and treated

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[28] Ibid., clause 5

[29] Ibid., clause 26(2).

[30] *The Congress Punjab Inquiry, 1919-1920: Report of the Commissioners Appointed by the Punjab Sub-Committee of the Indian National Congress* Vol. 1, (Bombay, March 25, 1920) pgs. 7-10, 24.

as an unlawful assembly and dispersed by force of arms if necessary."[31]

On that Sunday how widely the Proclamation was circulated is unknown. However, at 4 pm Dyer learned that a pre-planned public meeting was taking place at Jalianwala Bagh. The park was hosting a political debate by civilians from different religious backgrounds, as well as celebrations for a Sikh religious festival, Vaisakhi. The crowd did not consist only of Amritsar residents. Pilgrims from other towns and villages had travelled to the neighboring Golden Temple to celebrate the holiday.[32] The gathering was unarmed and there for peaceful purposes.[33]

Dyer proceeded to the Bagh to display full military admonishment. He was accompanied by two armoured cars plus 50 Indian infantry armed with rifles or swords ("kukris").[34] Even smaller than Trafalgar Square,[35] the entrance of the Bagh was too narrow for the cars to enter. The entrance also served as the exit, which the General promptly sealed off. The rest of the garden was bordered by houses and the Temple. There was no escape once Dyer gave the command to shoot.

The want to stamp out noncompliance egged the General to

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[31] Hunter Report, para. 35.

[32] "Punjab Disturbances: The Case of General Dyer," Hansard HL Deb 20 July 1920 vol 41 cc311-77 (citing Lord Buckmaster at p. 342. "…It is, however, remarkable that of the 374 people killed, 87 came from neighbouring villages, and therefore would not have the ordinary means (although they may have been made aware by telepathic means suggested by the noble and learned Lord) of the proclaiming of the meeting.")

[33] Ibid. Mahatma Gandhi, *Freedom's Battle: Being A Comprehensive Collection of Writings and Speeches on the Present Situation*, 2nd Edition, 1922 at p. 56.

[34] (Sd.) Edwin S. Montagu, "What happened at Amritsar," No. 188 Public To His Excellency The Right Hon'ble Governor-General Of India In Council, Montagu's Reply To Government Of India Despatch, India Office, London, May 26, 1920 at para. 3.
Walter Littlefield, "Has England A Dreyfus Case?" *The New York Times*, August 22, 1920, page xx8.

[35] "Army Council And General Dyer," HC Deb 8 July 1920 vol 131 cc 1705-1819. [Hereinafter **"**Army Council And General Dyer"]. (Citing Secretary of State for War, Winston Churchill at p. 1729).

target the 5,000 member crowd. Dyer gave no warning to the civilians nor chance to evacuate. His troops used 1,650 rounds of .303 mark VI ammunition.[36] Only then did Dyer leave the premises. Months later Dyer explained his actions in a written statement to his government:

> We cannot be very brave unless we be possessed of a greater fear. I had considered the matter from every point of view. My duty and my military instincts told me to fire. My conscience was also clear on that point. What faced me was what on the morrow would be "Danda Fauj" (-this, which may be translated as bludgeon army, was the name given to themselves by the rioters in Lahore). I fired and continued to fire until the crowd dispersed, and I consider this is the least amount of firing which would produce the necessary moral and widespread effect it was my duty to produce if I was to justify my action. If more troops had been at hand, the casualties would have been greater in proportion. It was no longer a question of merely dispersing the crowd, but one of producing a sufficient moral effect, from a military point of view, not only on those who were present, but more especially throughout the Punjab. There could be no question of undue severity."[37]

The events at Jalianwala Bagh were relayed to Dyer's superiors ten hours after they occurred. The lieutenant-governor of the Punjab, Sir Michael O'Dwyer was informed at 3 a.m. on April 14.[38] That evening the Chief Secretary received a terse telegram: "Sense seems to be — seven arrests were made to day and a prohibited meeting dispersed. Communicated to Colonel Gasneli who had no report-from the General Officer Commanding Amritsar. Rumours heavy casualties in Amritsar to-day."[39] The next day the

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[36] Ibid.

[37] Ibid.

[38] Nick Lloyd, "Sir Michael O'Dwyer and 'Imperial Terrorism' in the Punjab, 1919" Vol. XXXIII, no. 3 *Journal of South Asian Studies* (December 2010) 364 at 370.

[39] "Report of The Committee Appointed By The Government of India To Investigate The Disturbances In The Punjab, Etc. Presented to Parliament by Command of His Majesty" [hereinafter the "Hunter Report"], (London: Published By His Majesty's Stationery Office, 1920) at para. 42.
"Sir Michael O'Dwyer and Amritsar," *The Times*, February 9, 1920, p. 15.

Punjab Government sent an official telegram to the Government of India to report the Amritsar incident. It stated that the dead numbered about 200.[40] The true figure was almost 400, and there were at least three times more injured.[41] In the meanwhile, Dyer retained his command. He passed the Crawling Order on April 19. The Order was another disciplinary measure, but the reasoning behind it was to humble the population of Amritsar.[42] Pedestrians could not walk on the street but had to crawl in obesciance. In May General Dyer left India for the Third Anglo-Afghan War, but soon had to revisit the Amritsar issue. On July 19th he was finally asked to confirm his role in the Jalianwallah shootings. He gave his account on August 25[43] after which the Government of India and the Secretary of State asked for more facts. The Hunter Committee was formed to probe further.

The Hunter Report

The British Government passed Resolution No. 2168[44] in 1919 after the shootings at Jalianwala Bagh and related disturbances in India. This authorised the Government of India to appoint a committee to investigate the incidents and other strife in Punjab, Bombay and Delhi. The Committee was chaired by Lord Hunter. There were five English and three Indian members.[45] The Hunter Committee released

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[40] Colonel C.E. Yate, C.S.I.,C.M.G., D.L.,M.P, "The Amritsar Debates," *The Empire Review And Journal Of British Trade*, Volume XXXIV, edited by Sir Clement Kinloch-Cooke, (MacMillan And Co., Limited: London, 1920), 267 at 276.

[41] **"**Army Council And General Dyer," HC Deb 8 July 1920 vol 131 cc 1705-1819 (citing Secretary of State for War, Winston Churchill at p. 1725).

[42] "The Amritsar Debate," *The Times*, July 8, 1920, p. 15.

[43] See note 37 above.

[44] Resolution By the Government of India, Home Department No. 2168, dated Simla, the 14th October 1919.

[45] Lord Hunter was the President of the Enquiry Committee. The other members of the Hunter Committee were:

1. The Hon'ble Mr. Justice G.C. Rankin, Judge of the High Court, Calcutta

the Hunter Report to the Government of India in1920. The volume contained the recommendations of the majority and minority members respectively, which examined the Amritsar shootings and the military conduct of General Dyer.[46] Since the Report was not accessible to the public immediately, the New York Times printed excerpts of the summary by the British Government.[47] It described the killings as 'slaughter.'

The Committee exonerated the Government of India and blamed General Dyer for mishandling the affair. It found that the firing was justified due to the anti-Government sentiment leading to the incident. However, Dyer had employed a "mistaken belief." He had erred by ordering his troops to shoot without warning the civilian targets, and then prolong firing even when the crowd tried to disperse.

> The English members approve the action of the authorities prior to April 13 considering it impossible that de facto martial law could fail to result from the happening of April 10. But while admitting the difficulties of the situation, they consider that General Dyer's conduct at the Jallianwala Bagh is open to two criticisms in two respects, first, is that he fired without warning, and second, in that he continued firing too long. They do not believe that the mob would have dispersed if warned, and considered that firing would have been necessary in any case.

2. The Hon'ble Mr. W.F. Rice, C.S.I., I.C.S., Additional Secretary to the Government of India, Home Department
3. Major-General Sir George Barrow, K.C.B., K.C.M.G., I.A., Commanding the Peshawar Division
4. The Hon'ble Pandit Jagat Narayan, B.A., Member of the Legislative Council of the Lieutenant-Governor of the United Provinces
5. The Hon'ble Mr. Thomas Smith, Member of the Legislative Council of the Lieutenant-Governor of the United Provinces
6. Sir Chimanlal Harilal Setalvad, KT., Advocate of the High Court, Bombay
7. Sardar Sahibzada Sultan Ahmed Khan, Muntazim-ud-Doula, M.A., L.L.M., (Cantab.), Bar-at-Law, Member for Appeals, Gwalior State.

[46] Hunter Report, para. 39.

[47] "British Condemn Slaughter In India," *The New York Times*, May 26, 1920. Also see "Blame For Amritsar: Indians' Commission Says Sir Michael O'Dwyer's Policy Exasperated the People," *The New York Times*, May 30, 1920.

> They consider that General Dyer, through a mistaken belief that continued firing would be justified by the effect produced in other places, committed a grave error in firing too long.
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> They find no grounds for believing that this action saved the situation and averted a second mutiny. But they do not think that General Dyer can be blamed for not attending to the wounded, as they are not convinced any one was exposed to unnecessary suffering for want of medical attention.
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> This opinion is not shared by the Indian members, who, while agreeing to in condemnation of General Dyer's action, take a graver view of the whole incident, stigmatizing his conduct as inhuman and un-British.[48]

The public response to the Report in other parts of the British Empire was swift. In New Zealand, The Grey River Argus condemned the "white washing" majority report. The pro-Labour newspaper labelled the Report an "inhuman document." [49] The Poverty Bay Herald merely reproduced a United Press Association release which stated that Sir O'Moore Creagh, former commander in chief of the Indian army fully supported Dyer.[50] Sir O'Moore Creagh feared that the Report would encourage sedition. "The committee," he explained, "is formed of estimable gentlemen, but they do not know India." He ridiculed the committee's contention that General Dyer should have read the Act. "In what language would he have read it? … Was a brigade commander to summon professors and have the law translated?"[51] Interestingly the Government of India contradicted its ex-commanding officer. In its "Despatch On Hunter Committee Report" (addressed to the Secretary of State For India, Lord Montagu), the Government of India agreed with the Committee

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[48] Ibid.
"Amritsar," *The Times*, May 27, 1920, p. 13.

[49] "The Amritsar Massacre," *The Grey River Argus*, 12 November 1920, p. 6.

[50] "Quelling A Rebellion: Rebuke Of General Dyer," *Poverty Bay Herald* [now the *Gisborne Herald*], 29 May 1920, p. 3.

[51] Ibid.

that Dyer had failed to warn the unarmed crowd before firing.[52] It was indefensible that the troops had fired 1,650 rounds incessantly for ten minutes.[53] The General had transgressed his boundaries by trying to produce a moral effect on the crowd for breaching the Amritsar Proclamation. His account demonstrates the wilful nature of his instructions quoted earlier.

Dyer also failed to document the exact number of injuries and deaths.[54] He left the Bagh without arranging for medical assistance to the wounded, or for disposal of the dead. With that symbolic omission his task was done.[55]

Dyer's negligence earned him professional censure. He was demoted to Colonel and the Secretary of State for War, Winston Churchill, demanded that he resign from the Army. Colonel Dyer took voluntary retirement on July 17th 1920.

Political Reaction to Dyer's Acts at Jalianwallah Bagh

In the House of Lords Debates of July 19, 1920 Viscount Finlay argued that General Dyer had been treated unfairly after the Amritsar Massacre. He felt that the Secretary of State for India had reprimanded Dyer excessively. The Viscount put the following motion for debate before the House of Commons.

> "That this House deplores the conduct of the case of General Dyer as unjust to that officer, and as establishing a precedent dangerous to the preservation of order in face of rebellion."[56]

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[52] Hunter Report, para. 38.

[53] Ibid. Government Of India Home Department, To The Right Hon'Ble Edwin Montagu, His Majesty's Secretary Of State For India, Simla, Government Of India Despatch On Hunter Committee Report, May 3, 1920 at para. 21. [Hereinafter "Despatch On Hunter Report"].

[54] Despatch On Hunter Report, para. 22.

[55] Ibid, para. 44. "The facts are abundantly clear. General Dyer has made no attempt to minimize his responsibility for the tragedy or even to put a favourable complexion on his action or purpose."

[56] "Punjab Disturbances: The Case of General Dyer," Hansard HL Deb 19 July 1920, vol 41, cc 222-307 (citing Viscount Finlay at p. 222). [Hereinafter "Punjab Disturbances: The Case of General Dyer"].

Viscount Finlay raised several issues. 1. Was General Dyer treated unfairly by the Indian and British Governments after the massacre at Jalianwallah Bagh? 2. Did Dyer deserve the stigma of being removed from the Army after thirty-four years of service? 3. Was the Secretary of State for India (Mr. Montague) right to censure Dwyer when he said that "The omission to give warning before firing was opened was inexcusable?" 4. Did Dyer's superiors whom he had relied on deprive him of their protection and support? 5. Was General Dyer right to use the doctrine of frightfulness in suppressing the crowds at Jalianwallah Bagh? [57] In an earlier debate on July 8th, the Secretary of State for War, Mr. Churchill, had defined "frightfulness" as the inflicting of great slaughter or massacre upon a particular crowd of people, with the intention of terrorising not merely the rest of the crowd, but, the whole district or the whole country.[58] He did not endorse any use of the doctrine,[59] while Mr. Montague equated frightfulness with the doctrine of terrorism.[60]

Viscount Finlay stated that Dyer was treated unfairly by his superiors and stigmatized by the decision to leave the Army. He recognized that frightfulness creates a situation where innocent people are treated severely so that an effect is produced elsewhere.[61] Finlay supported the use of frightfulness in exceptional circumstances, such as the present scenario. According to him, General Dyer was right to use frightfulness since his intent was to deter future dissent from occurring in all of Punjab—and not just in Amritsar. The advantages of the doctrine are that it is 'cheaper' to frighten people into submission rather than to fight them to the bitter

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[57] Ibid., 229.
"The Amritsar Shooting," *The Times*, January 9, 1920, p. 6.

[58] **"**Army Council And General Dyer," HC Deb 8 July 1920 vol 131 cc 1705-1819 at p. 1728.

[59] Ibid.

[60] Ibid., 1707.

[61] Punjab Disturbances: The Case of General Dyer, 225.

end.[62] Presumably cheaper alludes to the qualitative measurements of human life, efficiency, financial and other resources. It may be less costly to take a few lives at the onset rather than to fight continually.

The Viscount's support for Dyer focused on the larger context of why Dyer had acted as he had, on his motivations and perceptions for firing on the civilian crowd. He defined the General's situation as a test case for British rule.

> The effect of this case upon the future of our public service in Indian, and indeed in all parts of our Empire, opens up a very large field. On that it is not necessary for me to say more than very few words. One of the main stays of our Empire has been the feeling that every officer whose duty it was to take action in times of difficulty, might rely, so long as he acted honestly and in the discharge of his duty, upon his superiors standing by him. If once the suspicion were created that for any reason, political or otherwise, an officer who had done what he believed to be his duty was to be thrown over, no one can exaggerate the mischievous effect such a feeling might have upon our public service.[63]

In other words, was the General being made a scapegoat though he had discharged his duties with integrity and with the prior knowledge of his commanding officers? Even if the superiors had knowledge of the act, even if they had not authorized it directly, had General Dyer used excessive force to crush the gathering of civilians at Jalianwallah Bagh? Inherent in this issue is the question of whether the gathering constituted an unlawful assembly or a rebellion.

The Viscount disagreed with the finding of the Hunter Commission "that no evidence had been brought before them sufficient to establish a conspiracy to overthrow the British Government in that region."[64] While he agreed that the individuals

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[62] Walter Raleigh, "England and the War," An Address to the Royal Colonial Institute, December 12, 1916.
"The doctrine, put briefly, is that people can always be frightened into submission, and that it is cheaper to frighten them than to fight to the bitter end."

[63] "Punjab Disturbances: The Case of General Dyer," 223.

[64] Ibid., 225.

formed an unlawful assembly in defiance of the two Proclamations passed earlier, this alone did not merit an application of frightfulness. However, he feared that the gathering had the potential to grow into a rebellion if unchecked. The gathering was not an "innocent gathering" but a mob of criminal elements which could cause future disturbances.[65] He then disagreed with the endorsement of the majority members of the Commission that the doctrine of frightfulness could be applied to the conduct of General Dyer.[66]

> On page 12 of the statement which General Dyer has put in, and which is printed as a White Paper, your Lordships will find this sentence used by General Dyer—What the Hunter Commission have done is to apply the principles applicable to unlawful assembly in times of otherwise general peace and quiet to a vital incident of a rebellion. The Government, as I understand their action, have identified themselves with that doctrine, promulgated by the Hunter Commission. I am going to submit to the House that this is an erroneous canon, and that it is unjust to an officer, in such circumstances as those in which General Dyer was placed, to apply any such canon in judging his conduct. Let me not be misunderstood. No man is more averse from what is called frightfulness than I am. The essence of frightfulness, of which we have had of late years some conspicuous examples on the continent of Europe, is that innocent people are treated severely and harshly with a view of producing an effect elsewhere. In defence of such conduct I should never utter a word, but the question here is a totally different one [italics added].
>
> If you are dealing with a formidable mob, assembled in defiance of the express orders of the Government, and at a time when an insurrectionary movement is in progress throughout the whole district, are you not justified, when you choose your way of putting down that insurrectionary movement, in doing it in a way which will have a beneficial effect on the restoration of order throughout the whole district? Where you have a state of things such as, unfortunately, existed in the Punjab (which really approximated to a state of war) strength is sometimes the truest mercy. If your Lordships would look at the map which is at the end of the Report of the Hunter Commission, your Lordships will find that it represents by a series of red marks what was the

[65] Ibid., 232.

[66] Ibid, 225. The Indian minority members voiced the opposite view.

> state of things in the Central and Northern Punjab in April of last year. There are a number of red marks which indicate the districts where the cutting of telegraph wires, arson and murder had prevailed, and a most formidable appearance have these red marks upon that map. They extend from the Sutlej on the east, through the district of the five rivers, through the Punjab itself, and they go on to the Indus. When you have that state of things there it is impossible, by the light of evidence, to come to any conclusion other than that the action taken throughout the Punjab was concerted action and was a conspiracy."[67]

Ironically, Viscount Finlay said that while he abhored frightfulness, General Dyer was right to employ a wider outlook at Amritsar. Dyer believed that he did not face innocent people but a guilty force.[68] Accordingly, he did not deal only with the problem at Amritsar (a potential local riot) [69] but had tried to prevent widespread rebellion in the rest of Punjab.[70]

In the House of Lords debate on July 8th, Mr. Montagu had argued why he considered that Dyer's conduct amounted to terrorism. The following passage explains why as the Secretary of State for India he condemned the Amritsar incident.[71]

> The real issue can be stated in one sentence, and I will content myself by asking the House one question. If an officer justifies his content, no matter how gallant his record is—and everybody knows how gallant General Dyer's record is—by saying that there was no question of undue severity, that if his means had been greater the casualties would have been greater, and that the motive was to teach a moral lesson to the whole of the Punjab, I say without hesitation, and I would ask the Committee to contradict me if I am wrong, because the whole matter turns upon this, that it is the doctrine of terrorism.

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[67] "Punjab Disturbances: The Case of General Dyer," 225-226.

[68] Ibid.

[69] Ibid., 231.

[70] Ibid., 224.

[71] "Army Council And General Dyer," 1707. Also see "Punjab Disturbances: The Case of General Dyer," at
p. 263 where The Marquess of Crewe says "…Well, for "India" read "Ireland."…"

> If you agree to that, you justify everything that General Dyer did. Once you are entitled to have regard neither to the intention nor to the conduct of a particular gathering, and to shoot and to go on shooting, with all the horrors that were here involved, in order to teach somebody else a lesson, you are embarking upon terrorism, to which there is no end. I say, further, that when you pass an order that all Indians, whoever they may be, must crawl past a particular place, when you pass an order to say that all Indians, whoever they may be, must forcibly or voluntarily salaam any officer of His Majesty the King, you are enforcing racial humiliation. I say, thirdly, when you put up a triangle, where an outrage which we all deplore and which all India deplores has taken place, and whip people who have not been convicted, when you flog a wedding party, you are indulging in frightfulness, and there is no other adequate word which could describe it ... Are you going to keep your hold upon India by terrorism, racial humiliation and subordination, and frightfulness, or are you going to rest it upon the goodwill, and the growing goodwill, of the people of your Indian Empire?[72]

In short, this was not the British way of doing business.[73] Lord Asquith was a former Prime Minister and pondered a crucial factor. Why did Dyer have the power to act with such impunity? The civil authority clearly had given the Brigadier General a carte blanche.[74] That gross dereliction of duty had caused a vile breakdown of law and order.[75] Mr. Asquith did not merely raise these points as mitigating factors to absolve Dyer, but to suggest that the public explanation was incomplete. His doubts did not discount the presence of other actors in the catastrophe, nor the absence of other information. Perhaps one reason for his confusion was that Dyer may have acted out of character. Dyer did not have a prior history of treating the native population unfairly, yet he had fired against civilians without giving notice and then abandoned the dead and wounded. Such callousness was at odds with his evolution as a

[72] "Army Council And General Dyer," 1708.

[73] Ibid., 1730.

[74] Ibid., 1734.

[75] Ibid., 1735.

military man. Dyer had worked with Sikh soldiers from the start of his career.[76] He had used the occasions to learn about Punjabi culture and assimilate when required.[77] This paradox is why General Dyer's conduct at Jalianwallah Bagh remains perplexing.[78]

The Bhagat Singh Litigation

Bhagat Singh was twelve when the Amritsar Massacre toccurred. He visited the site the next day and bottled a sample of blood stained soil. Years later, he too became subject to the draconian court process made possible by the Defence of India Act 1915. He was prosecuted in two court cases on unsubstantiated charges. In both the Delhi Assembly Bomb Case and the Second Lahore Conspiracy Case he and the other suspects were convicted on weak evidentiary grounds. This injustice was caused largely by the Interpretation clause of The Indian Evidence Act, 1872.[79] The definition of a 'fact' in the Interpretation clause remains in force today. It is:

> (1) any thing, state of things, or relation of things, capable of being perceived by the senses; or
>
> (2) any mental condition of which any person is conscious.

Both subsections 1 and 2 can be read subjectively instead of objectively, which is the required legal standard. Under subsection (1) a mistaken perception of a witness can be accepted as reality. The witness may see or hear something but erroneously identify the source. Subsection (2) can prove detrimental to an accused who negates the privilege of self incrimination unwittingly. One's cognizance may follow from a perception that is an illusion or hallucination even. That mental condition could be caused by

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[76] Nigel Collett, The Butcher of Amritsar: General Reginald Dyer, (Hambledon Continuum: London, 2005), pgs. 50, 52, 79.

[77] Ibid.

[78] "The Amritsar Report," *The Times*, June 9, 1920, p. 5.

[79] The Indian Evidence Act, 1872 (Act No. 1 of 1872),15th March 1872, section 3.

emotional factors (nervousness, stress) or drugs and alcohol. In the scenarios possible under subsections (1) and (2) there is a distortion of the truth, which can be dangerous if the court accepts that the 'facts' have been proven. That wrongful evidence can be admitted in view of the definition of "proved" in the Interpretation Act.

> "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists."[80]

The Evidence Act does not define 'prudent.' Therefore, what the qualities of a prudent man are is left to the Court's discretion and, again, this could be subjective. In the Bhagat Singh litigation, witnesses changed their testimonies or gave ambiguous accounts. When accepting these versions as facts, the tribunals relied on falsehoods and hearsay to reach their judgments.

The Delhi Assembly Bomb Case

By 1929 Bhagat Singh was describing himself a Revolutionary in his writings. He made it clear that Revolution did not mean the cult of the bomb and the pistol. Revolution meant that change should occur if the present order of things was based on manifest injustice. The Supreme Court of India approved his definition in 2011. In Bhanumati v. State of U.P.[81] it stressed that constant political scrutiny was vital in a democracy. That caution in India was a safeguard to validate the Constitution.[82]

In his era, though, Bhagat Singh was perceived as a criminal anarchist by the government. In the 1929 Delhi Assembly Bomb Case he was convicted as a political terrorist under Section 307 of the Indian Penal Code, 1860[83] and Section 3 of the Explosive Substances

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[80] Ibid.

[81] *Bhanumati* v. *State of U.P.* AIR 2010 SC 3796 at paras. 39-42.

[82] Ibid.

[83] The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 307: Attempt to murder.--Whoever does any act with such intention or knowledge, and under such

Act, 1908.[84] Bhagat Singh and B.K. Dutta were arrested in April 1929 for protesting the introduction of the Trade Disputes Bill and Public Safety Bill in the Delhi Legislative Assembly. Two bombs were thrown in an empty space with the intention to cause property damage. However, several persons were injured. In a written statement to the court Bhagat Singh admitted throwing the bombs, but the testimony raises doubts about the accuracy of eyewitness and police accounts of the roles of Singh and Dutta.[85] Both accused were sentenced to fourteen years imprisonment, but the sentence was deferred. The April trial was linked to a new prosecution as Singh and Dutta were charged in the 1928 murder in Lahore of two police officers, Mr. Saunders, Assistant Superintendent of Police, and head

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circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to
1[imprisonment for life], or to such punishment as is hereinbefore mentioned.
Attempts by life- convicts. Attempts by life- convicts.- 2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]

[84] The Explosive Substances Act, 1908 (Act No. 6 of 8th June,1908), s. 3: Punishment for causing explosion likely to endanger life or property.- Any person who unlawfully and maliciously causes by any explosive substance and explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

[85] Text of Statement in the Session Court of S. Bhagat Singh and B.K. Dutt in the Assembly Bomb Case.
(Read in the Court on 6th June, 1929, by Mr. Asaf Ali on behalf of Bhagat Singh and B.K. Dutt)
Para. 3: "...since some of the so-called 'eye witnesses' have perjured themselves and since we are not denying our liability to that extent, let our statement about them be judged for what it is worth. By way of an illustration, we may point out that the evidence of Sergeant Terry regarding the seizure of the pistol from one of us is a deliberate falsehood, for neither of us had the pistol at the time we gave ourselves up. Other witnesses, too, who have deposed to having seen bombs being thrown by us have not scrupled to tell lies. This fact had its own moral for those who aim at judicial purity and fairplay."

constable Chanan Singh. The defendants were placed in the Lahore Central Jail to await trial. This prolonged litigation became known as the Second Lahore Conspiracy Case.

The Second Lahore Conspiracy Case

In jail Singh and Dutta complained about the poor care given to Indian political prisoners. Non-Indian inmates in Indian prisons traditionally had borne easier terms.[86] As well as making written requests to high officials, Singh and others went on hunger strikes. They asked for the same conditions that were offered to foreign political prisoners,[87] such as proper diet, reading and toilet facilities and no forcible labor. Dutt raised the issue of nasal forced feeding. He revealed that Bhagat Singh had been unconscious on July 10th for almost fifteen minutes.[88] Doctors in colonial jails participated in forced feeding since the practice was allowed by UK law. Forced feeding had been legal in the UK since 1909 under the defense of necessity, or duress of circumstances to save life.[89] Ironically, the

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[86] Harald Fischer-Tiné, "Chapter 3 Hierarchies of Punishment in Colonial India: European Convicts and the Racial Dividend, c. 1860–1890," in *Empire and Boundaries*: *Rethinking Race, Class and Gender in Colonial Settings*, eds. Harald Fischer-Tiné and Susanne Gehrmann, (Taylor & Francis: New York, 2009), p. 44.

[87] Letter of 17th June 1929 from Sd. Bhagat Singh, Life Prisoner, Mianwali Jail to the Inspector-General, Punjab Jails, Lahore, Through M. Abbas, Superintendent, District Jail, Mianwali.
See exchange of correspondence on the issues raised in the above letter. Reply from M Abbas, Superintendent District Jail, Mianwali dated 18.6.1929 to Mr. Bhagat Singh, Transportation Prisoner, "Ref. Your petition dated 17.6.1929 regarding your treatment as a Political Prisoner."
Letter of Letter of 17th June 1929 from Sd. Bhagat Singh, Life Prisoner, Mianwali Jail to the Inspector-General, Punjab Jails, Lahore, Through M. Abbas, Superintendent, District Jail, Mianwali.
from Bhagat Singh, Mianwali Jail to M. Abbas, Superintendent, District Jail, Mianwali.
Prisoner No. 1119, Central Jail, Lahore, Bhagat Singh and BK Dutt's letter to the Home Member, Government of India, 24 June 1929.

[88] Prisoner No. 1119, Central Jail, Lahore, Bhagat Singh and BK Dutt's letter to the Home Member, Government of India, 24 June 1929.

[89] *Leigh* v. *Gladstone* (1909) 26 Times LR 139. The right of a prisoner of sound mind and capacity to refuse food was recognized in *Secretary of State* v. *Robb* [1995] 1 All

medical methods used could be fatal to the patient.[90]

The above requests were fruitless. The trial began on July 11th 1929 in the Special Magistrates court. Those proceedings stopped a year later when the Governor General invoked his emergency powers through s. 72 of the Government of India Act, 1915. On May 1st, 1930 the Governor General swiftly passed the Lahore Conspiracy Case Ordinance[91] to resume the hearing in a special tribunal on May 5th. His reason for enacting the Ordinance was the non-cooperation of the defendants. Hunger strikes in prison and disorderly conduct in court by the accused had compelled court adjournments. The delays had brought the administration of justice into disrepute.[92]

Yet, from July 11th 1929 to October 7th 1930 when the judgment was passed, the legal proceedings were marked by denial of counsel for the defendants, unreliable witnesses, and arbitrary legal standards. One of the co-accused who was acquitted described the unfair trial.

> After nine months of trial before the magistrate and long before even a small number prosecution witnesses had been examined, the proceedings were abruptly ended and 'in view of the emergency' that had arisen threatening 'peace and tranquility' a special ordinance was promulgated by the viceroy to try us known as the Lahore Conspiracy Case Ordinance of 1930, its provisions were of an unheard of character. We were to be tried before a special tribunal that could, if it deemed in necessary, dispense with our presence. There need be no lawyers, no defense witnesses, no accused in the court. Any sentence, including the sentence of death, could be passed by the tribunal. And to crown it all, against its judgment there was no right of

ER 677 at 681 and *R (On the Application of Wilkinson)* v. *The Responsible Medical Officer Broadmoor Hospital* [2001] All ER (D) 294.

[90] See Frank Moxon, "What Forcible Feeding Means," The Woman's Press, Lincoln's Inn Press, Kingsway, W.C., (1914) at pgs. 15-26.
Ajay Ghosh, *Bhagat Singh and His Comrades: A Page From Our Revolutionary History* (Bombay, 1945), pgs. 11-13.

[91] Lahore Conspiracy Case Ordinance, 1930, Ordinance No. III of 1930, dated May 1, 1930 at Simla. Section 9,10,11.

[92] Ibid., Statement by Viceroy and Governor General Irwin.

> appeal. Never had any government calling itself civilized adopted such measures.
>
> What the government intended, above all, was to defeat our policy of using the trial for revolutionary propaganda. Another thing, it seemed, was worrying them. Mr. Frane, the only police official present at the spot when assistant superintendent Saunders was killed, had failed to identify Bhagat Singh. Due to the tremendous popular enthusiasm that the case had evoked, a number of key witnesses had turned hostile, more were likely to follow suit and two of the approvers had retracted their confessions. The whole case was in danger of ending in a fiasco if ordinary legal procedure were followed and ordinary legal facilities allowed us.[93]

The legal profession denounced in particular the inability to appeal to the High Court at Lahore. The Lahore High Court Bar Association opined unsuccessfully that the Ordinance was void in view of section 72 of the Government of India Act.[94] Still, the ex parte trial[95] released its judgment on October 7, 1930 although Bhagat Singh and others were not present in the court. It is worth reproducing the wording of the original death warrants to show the continuing inconsistencies in the legal process.

Warrant of Execution on Sentence of Death
Section 381 of the Criminal Procedure Code

Sections 8 and 11 of Ordinance No. III of 1930.

In the Court of the LAHORE CONSPIRACY CASE TRIBUNAL, Lahore, constituted

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[93] Ajay Ghosh, *Bhagat Singh and His Comrades: A Page From Our Revolutionary History* (Bombay, 1945), p. 16.

[94] *The Lahore Conspiracy Case Ordinance*, Lahore High Court Bar Association Report, June 19, 1930.

[95] Jatinder Sanyal, *Sardar Bhagat Singh: A Short Life Sketch* (May 1931)

under Ordinance No III; of 1930.

TO THE SUPERINTENDENT OF THE CENTRAL JAIL AT LAHORE

> WHEREAS Bhagat Singh, son of Kishen Singh, resident of Khawasrian, Lahore, one of the prisoners in the Lahore Conspiracy Case, having been found guilty by us of offences under section 121 and section 302 of the Indian Penal Code and also under section 4(b) of the Explosive Substances act reads with section 6 of that Act and with section 120-B of the Indian Penal Code at a trial commencing from the 5th May, 1930, and ending with the 7th October 1930, is hereby sentenced to death.
>
> This is to authorise and require you, the said Superintendent, to carry the said sentence into execution by causing the said BHAGAT SINGH to be hanged by the neck until he be dead at Lahore on the 27th day of October, 1930, and to return the warrant to the High Court with an endorsement clarifying that the sentence has been executed.

Similar warrants were issued for Raj Guru and Sukh Dev. There were attempts to dispute the judgment by members of the public and the relatives of the condemned. The judgment was referred successfully on procedural points to the Bombay High Court. At the very least the appeal had the effect of delaying the execution date. However, in Bhagat Singh v. King Emperor the Court dismissed the petition on February 27, 1930. The refusal to examine the legality of the special tribunal was myopic. The Lahore Ordinance held questionable legal weight. It was due to lapse on October 21, 1930 as neither the Central Assembly nor the British Parliament had yet passed it.

The three revolutionaries were hanged nearly one month after the Bhagat Singh verdict. The United Press Association reported from Delhi on March 23rd that the men were likely to be executed the next morning.[96] However, a later release that evening gave this breaking news.

[96] "For Political Murder Appeal In India Fails," United Press Association—By Electric Telegraph, Delhi, 23rd March 1931. Received 24th March, 11 a.m. in New

DELHI, 23rd March.

> The Lahore High Court, having rejected the appeal of Bhagat Singh, Raj Guru, and Sukh Dev against the sentence of death in connection with the murder of Mr. Curtis, a police officer, at Lahore last year, the three terrorists were executed at the Lahore Gaol. The executions were carried out with the strictest secrecy, and the bodies were removed to an unknown place for burial.
>
> Strong precautions were taken against disorder in Lahore.[97]

Bhagat Singh's death certificate said that the hanging was at 7 p.m. " The body remained suspended for a full hour, and was not taken down until life was ascertained by a medical officer to be extinct; and that no accident, error or other misadventure occurred."[98]

No official cause was given why the punishments were carried out a day early and in the evening, especially as hangings were meant to occur before noon.[99] The Punjab Government refused to give the corpses to the relatives citing the need to stop riots from breaking out.[100] The Congress Working Committee expressed the loss as acts of wanton vengeance[101] but could do little. The execution site (Phansighat) was spared two decades later when the gaol was crushed for urban reasons. It is a traffic circle named Shadman Chowk in what is now Pakistan.

Conclusion

Zealand and Reprinted in *Evening Post*, Volume CXI, Issue 70, 24 March 1931, page 9.

[97] "Lahore Terrorists, Strictest Secrecy," United Press Association—By Electric Telegraph, Delhi, 23rd March 1931. Received 24th March, 11 a.m. in New Zealand and Reprinted in *Evening Post*, Volume CXI, Issue 70, 25 March 1931, Page 9.

[98] Death Certificate of Indian Freedom Fighter Bhagat Singh, dated March 23, 1931 (Source: Archives of the British Government in India).

[99] Hazara Singh, M.A.,LL.B., *Freedom Struggle Against Imperialism*, (Foil Printers, Gobind Nagar: Ludhiana, India, 2007), p. 41.

[100] Ibid., p. 43.

[101] "India: Naked to Buckingham Palace," *Time*, Monday, April 06, 1931.

The aim of emergency law in the early twentieth century was to inspire allegiance to British India. The Defence of India Act 1915, Government of India Act 1915, and the Rowlatt Act 1919 were passed to end the Indian independence movement. The result was denial of civil liberties to innocents and alleged suspects. Proof of this is the Amritsar Massacre, and detentions and prosecutions of Gadar returnees and Bhagat Singh, Raj Guru, and Sukh Dev. There were no legal proceedings after these miscarriages of justice, but the public did not forget the events.[102]

What are the repercussions of these draconian laws and their regrettable effects? The imprisonments, trials, and killings involved issues of sedition, capital punishment, and forced feeding under colonial laws and practices. The legacy of that system remains in twenty first century India. That nexus—or crossover—needs judicial scrutiny.

Sedition

At first section 124-A of the Indian Penal Code, 1860 did not identify a provision for sedition. The heading under s. 124-A was "Exciting Disaffection."

124-A. Exciting Disaffection-

Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which, fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

The first case to test this definition approved a low threshold to infer guilt. Queen-Empress v. Jagendra Chunder Bose held that that intention behind one's words was enough to incite ill will against the King or Government, even if no disturbance actually materialized.[103] The rationale for such caution was based on English

[102] "The Amritsar Document," *The Times*, June 1, 1920, p. 15.
"Great Britain: Assassination At A Lecture," *Time*, Monday, Mar. 25, 1940.

[103] *Queen-Empress* v. *Jagendra Chunder Bose* (1891) I.L.R. 19 Cal. 35.

case law, which considered sedition as a crime against society that was nearly allied to treason.[104]

Section 124-A was amended in 1898 to reflect the current definition of sedition.[105] The section arguably breaches article 19(1)(a) of the Constitution of India,[106] but the Supreme Court has ruled that the right to freedom of speech and expression is intact.[107] Any restriction is in the interest of public order. Nevertheless, there is a risk of an abuse of law in light of s. 121 of the Penal Code .[108] Section 121 imposes capital punishment on those found guilty of waging war against the Government of India. If the death penalty should be part of a democratic constitution is an issue in itself. Whether the penalty should be used against a guilty person is one debate, but if a court finds a person guilty and that person really is innocent, then, that again, is a miscarriage of justice. Thus sections 124-A and 121 form a double jeopardy.

It would be logical to strike out these sections. India remains one of the last Commonwealth countries to retain the crime of

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[104] *R.* v. *Alexander Martin Sullivan* 11 Cox Crim. Cas 44, 45 (1868).

[105] Indian Penal Code, 1860, s. 124-A: "Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred to contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life or any shorter term to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine."

[106] The Constitution of India 1950, article 19(1)(a): All citizens shall have the right to freedom of speech and expression.

[107] *Kedar Nath Singh* v. *State of Bihar* 1962 SCR Supl. (2) 769 (citing at p. 785 *Queen-Empress* v. *Balgangaddhar Tilak* (1897) I.L.R. 22 Bom. 112).

[108] Indian Penal Code, 1860, s. 121: Waging, or attempting to wage war, or abetting waging of war, against the Government of India.-- Whoever wages war against the 3[Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or 4[imprisonment for life] 5[and shall also be liable to fine]. 6[Illustration.] 7[A joins an insurrection against the 3[Government of India]. A has committed the offence defined in this section.

sedition. The UK eliminated the offense in 2010 when section 73 of the Coroners and Justice Act 2009 came into effect.[109] Uganda followed in 2011. In Charles Onyango-Obbo and Andrew Mujuni Mwenda v. Attorney General[110] the Constitutional Court ruled that articles 39(1)(a) and 40(1)(a) of The Penal Code Act[111] breached article 29(1)(a) the Constitution. Under article 29(1)(a) freedom of the press and other media are part of the rights of freedom of speech and expression.[112] The sedition clauses were not justifiable limits in a free and democratic society per article 43(2)(c).[113]

The argument applies in India.

Capital Punishment

India ratified the International Covenant on Civil and Political Rights

[109] Coroners and Justice Act 2009 c. 25, s. 73: Section 73 abolishes the common law offences of sedition, seditious libel, defamatory libel and obscene libel in England and Wales and Northern Ireland.

[110] *Charles Onyango-Obbo and Andrew Mujuni Mwenda* v. *Attorney General* [2010] UGCC 5.

[111] The Penal Code Act 1950, article 39(1)(a): A seditious intention shall be an intention *t*o bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution*;* article 40(1)(a): Seditious offences. (1) Any person who (a) does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention,

[112] Constitution of the Republic of Uganda 1995, article 29: (1) Every person shall have the right to-
(a) freedom of speech and expression, which shall include freedom of the press and other media.

[113] Ibid., article 43(1)(2)(c): (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
(2) Public interest under this article shall not permit— (c) any limitation of the enjoyment of the rights and freedoms
prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

(ICCPR)[114] in 1979, but has not signed the Optional Second Protocol. The Protocol requires state parties to abolish the death penalty.[115] Capital punishment is sanctioned by the Indian Constitution. The irony is that it exists with the consent of Article 21. Article 21 states that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Code of Criminal Procedure, 1973 upholds the death sentence.[116]

In India the execution of civilians always has been by hanging.[117] At issue then, is whether more humane modes of killing should be applied. A bill to abolish the death penalty was introduced in the Old Legislative Assembly in February 1931, but lacked support of the Home Minister.[118] Bhagat Singh also drew notice to section 368(1) of the Code of Criminal Procedure, 1898.[119] In his last petition to the Governor of Punjab dated March 1931, he asked if he and the others could be shot?

> The main charge [he wrote] against us was that of having waged war against H.M. King George, the King of England...We

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[114] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) (entry into force on 23 March 1976).

[115] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (entry into force on 11 July 1991), article 1(2): Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

[116] Criminal Procedure Code, 1973 (Act No. 2 of 1974), s. 354(5): When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

[117] "Chapter 4: Execution Of Death Sentence In India," *187th Report On Mode of Execution Sentence and Incidental Matters, Law Commission Of India*, October, 2003, p. 23.

[118] *Capital Punishment*, Thirty-Fifth Report of the Law Commission Of India Volume I-III, Government of India, Ministry of Law (September, 1967) at para. 12 (citing Legislative Assembly Debates (1931), Vol. I, p. 949).

[119] The Code of Criminal Procedure, 1898 (Act No. V of 1898), s. 368(1) Sentence of Death. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

> wanted to point out that according to the verdict of your court we had waged war and were therefore war prisoners. And we claim to be shot dead instead of to be hanged. It rests with you to prove that you really meant what your court has said. We request and hope that you will very kindly order the military department to send its detachment to perform our execution.[120]

The Supreme Court of India has ruled that hanging does not breach articles 19 and 21 of the Constitution. Hanging by rope remains the preferred method for it eliminates the possibility of a lingering death.[121] It excludes barbarity, torture or degradation.[122] However, Bachan Singh v. State of Punjab cautions that the death penalty should apply in the rarest of rare cases.[123] The prosecution must show that it would be impossible to rehabilitate the defendant.[124]

Forced Feeding

Bhagat Singh and other prisoners carried out hunger strikes as a political tool. The intent was to spotlight injustices and bring about changes.[125]

For Bhagat Singh and other inmates, forced feeding by the State blocked the right to self-determination. This was because the techniques involved actually posed a risk to health and safety. The practice could be fatal and provoked questions about medical

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[120] Letter to the Punjab Governor from Bhagat Singh dated March 1931.

[121] *Deena alias Deena Dayal Etc. Etc.* v. *Union of India And Others* 1983 AIR 1155 at paras. 46 and 60.

[122] Ibid., para. 59
Shashi Nayar vs Union Of India And Ors 1991 SCR Supl. (2) 103 at p. 107.

[123] *Bachan Singh* v. *State of Punjab* (1982) 3 SCC 24 at paras. 256, 258, 298

[124] *Santosh Bariyar* v. *State of Maharashtra* JT 2009 (7) SC 248 at paras 45 and 65.
Ramnaresh and Others v. *State of Chattisgarh* 2012 STPL (Web) 143 SC at para. 26.
Rajendra Pralhadrao Wasnik v. *State of Maharashtra* (2012) 4 SCC 37.

[125] *Paramjit Kaur And Ors.* v. *Union of India And Ors.* (2004) 136 PLR 753 (Punjab-Haryana High Court) at para. 13(e).

ethics[126] and government indifference or negligence.[127] It is a form of torture that has been confirmed by the European Court of Human Rights. In Nevmerzhitsky v. Ukraine, the Court found that the force feeding of the applicant breached article 3 of the European Convention of Human Rights.[128] On the other hand, in the U.S. a state court has ruled that nasal feeding does not violate an inmate's constitutional rights of free speech and privacy. Nor does forced feeding offend international law.[129]

The Supreme Court of India has not discussed the subject of forced feeding of prisoners. However, it has suggested that feeding could be withdrawn for brain damaged patients as a form of passive euthanasia.[130] In these situations, removing nourishment has the effect of ending the person's life support. That is the distinction between force feeding a vegetative person and a prisoner who selects willingly not to eat. A brain damaged patient has less capacity and

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126 George J. Annas, J.D., M.P.H., "Hunger Strikes at Guantanamo—Medical Ethics and Human Rights in a 'Legal Black Hole,' *The New England Journal of Medicine*, September 28, 2006, p. 1377 at p. 1379.
N.Y. Oguz and S.H. Miles, "The Physician and Prison Hunger Strikes: Reflecting on the Experience in Turkey," *Journal of Medical Ethics* (2005), p. 169.
Markus Muller and Christoph Jenni, "Hunger Strike and Force-Feeding," Schweizerische Arztezeitung, 08/2011, p. 284.

127 In the U.S. the courts have tried to do a balancing act taking into consideration a person's right to bodily integrity and privacy with the state's compelling interest to preserve life. For a comparative view, see Steven C. Sunshine, "Should A Hunger Striking Prisoner Be Allowed To Die?" 25 (2) *Boston College Law Review* (1984) 423. However, the U.N. Commission on Human Rights observes that force feeding in U.S. military facilities, such as the Naval Base at Guantanamo Bay, is inconsistent with domestic policy. See *Situation of Detainees at Guantanamo Bay*, Sixty-second session of the Commission of Human Rights, E/CN.4/2006/120 at paras. 79 and 81.

128 *Nevmerzhitsky* v. *Ukraine*, no. 54825/00). Judgment of 5 April 2005.
Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221, article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

129 *Commissioner of Correction* v. *William B. Coleman* (SC 18721) Judgment of 13 March 2012 (Connecticut Supreme Court).

130 *Aruna Ramachandra Shanbaug* v. *Union of India & Ors.*, Writ Petition Para. 127.

physical means of survival than an inmate who undertakes a hunger strike for considered motives. So at issue is not the withdrawal of the food source from captives and the immobile—which is a draconian use of the law. The question relates to the method of employment; what are less risky ways to furnish sustenance to prisoners than through naso-gastric tubes? Mercy killing should not be the objective of the state, specifically in cases of political dissent.